

## **REMARKS**

### **1. STATUS OF CLAIMS**

Claims 1-6 remain present in this application.

Claims 1 and 4 have been amended. Support for these amendments can be found throughout the specification, claims, and drawings as originally filed.

Claims 7-8 are withdrawn.

### **2. REJECTION OF CLAIMS 1-6 UNDER 35 U.S.C. § 103(a)**

In the present Office Action, the Examiner rejected claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,336,623 to McCarthy (hereinafter "McCarthy"). Applicant respectfully traverses the § 103(a) rejection as to claims 1-6.

The MPEP sets forth that the standard for obviousness requires that there must be some suggestion, either in the reference or the relevant art, of how to modify what is disclosed to arrive at the claimed invention. MPEP § 2143. The combination of prior art references must have been "obvious to a person with ordinary skill in the art." *KSR Int'l Co. v. Teleflex, Inc. et al.*, 127 S. Ct. 1727 (2007). To be *prima facie* obvious, there must be an apparent reason why a person of ordinary skill in the art would combine the references, and that analysis should be made explicit. *Id.*

The Examiner stated in the Office Action that McCarthy teaches a bracket comprising a first generally U-shaped recess, a fastening member, and a second generally U-shaped recess for receiving a guard board. The Examiner further stated that the first generally U-shaped recess has two substantially parallel sides that are directly opposite each other, the bracket including an extension having one or more generally U-shaped recesses. The Examiner also stated that the fastening member is a

bolt, and that McCarthy teaches a plurality of brackets (Figs. 1 and 6) secured along the fascia board of a roof.

In addition, the Examiner stated that McCarthy teaches the first generally U-shaped recess is mounted on the fascia board, and that it would have been obvious for one of ordinary skill in the art at the time the invention was made to have placed element 16 of McCarthy underneath the fascia board to provide security for the bracket to maintain connection to the fascia board.

First, as a general matter, McCarthy teaches a hinged mechanical device that attaches to the roof sheeting. It is used once the roof is sheeted off and allows no protection prior to sheeting. Additionally, the Examiner's argument that it would have been obvious to one of ordinary skill in the art to place McCarthy's first base plate 16 on the other side of the fascia board is contrary to the teachings of McCarthy. The first base plate 16 is specifically designated for attachment to the side surface 50 of a building 52 so that post 12 is *spaced from* building side surface 50. (See col. 2, lines 49-51 (emphasis added) and Fig. 6). The Examiner's proposed modification to McCarthy's device would result in the first base plate 16 not attaching to the side surface of the building 52. In addition, the arrangement would result in post 12 not being spaced from the building side surface 50. Thus, there is no reason to modify McCarthy in the manner suggested by the Examiner. Indeed, such a modification is contrary to McCarthy's express teachings. Nevertheless, Applicant has amended the claims to require that the first generally U-shaped recess of the fascia guard bracket be permanently fixed in the general U-shape. This limitation further distinguishes McCarthy, since the base plate 16 is pivotally mounted by pivot joint 14, such that base plate 16 may form a variety of shapes, with respect to post 12.

By way of the foregoing discussion, Applicant has demonstrated that the pending claims would not have been rendered obvious in view of McCarthy. Accordingly, the

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rejection of claims 1-6 under 35 U.S.C. § 103(a) should be withdrawn, which action is respectfully requested.

Applicant respectfully submits that this Amendment and Reply are fully responsive to the above-referenced Office Action, and that the claims are in condition for allowance, such allowance being respectfully requested.

### **3. PRIOR ART**

The remaining prior art made of record was not applied to the claims. Applicant has reviewed that reference, and agrees with the Examiner that such reference does not teach the claimed invention.

### **CONCLUSION**

For all of the foregoing reasons, Applicant respectfully submits that claims 1-6 are in condition for allowance, which action is respectfully requested. If the Examiner has any questions or comments with respect to this Reply, the Examiner is encouraged to contact the undersigned at 616/949-9610.

Respectfully submitted,

July 31, 2007  
Date

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